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FREDERICK C. NASH

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 11 1

FORD MOTOR COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA

No. 12 2

COMMERCIAL INVESTMENT TRUST CORPORATION,
COMMERCIAL INVESTMENT TRUST,
INC., UNIVERSAL CREDIT CORPORATION,
et al.,

Appellants,

vs.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA

MOTION TO PASS

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1947

No. 41.

FORD MOTOR COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA

No. 12

COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVESTMENT TRUST, INC., UNIVERSAL CREDIT CORPORATION, et al.,

Appellants,

vs.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA

MOTION TO PASS

Come now the appellants in the above-entitled causes and move that hearing of oral argument therein be passed until a Session of this Court commencing in April of the

resent Term, and in support of their motion make the following brief statement of the reasons therefor:

On November 15, 1938 a single consent decree in a civil antitrust action was entered against all of the appellants in both of these cases by the District Court of the United States for the Northern District of Indiana.

These appeals involve questions of the right of Ford Motor Company (herein called "Ford"), appellant in No. 1, and Commercial Investment Trust Corporation and others (herein collectively called "CIT"), appellants in No. 12, to termination or suspension of certain injunctions in that consent decree. There are two major questions. One (herein called the "affiliation question") is presented only in No. 11 and involves Ford alone. The second (herein called the "persuasion question") is presented in both No. 11 and No. 12 and involves both Ford and CIT. Both appeals are before this Court on a single record, the Government has presented a single brief thereon and both appeals will be presented in a single argument.

The affiliation question may be affected by the ultimate decision in a civil antitrust case which is pending in the District Court of the United States for the Northern District of Illinois, Eastern Division, entitled *United States v. General Motors Corporation, et al.* (Civil No. 2177). In that case, which was commenced on October 4, 1940, the relief sought in the complaint is a judgment requiring General Motors Corporation to divest itself of its affiliated finance company, General Motors Acceptance Corporation.

Paragraph 12 of the decree herein involved enjoins appellant Ford from, among other things, making any loan to or purchasing the securities of any of the appellants CIT or any other finance company. It also provides, however, as "an express condition of this decree", that, if

an effective final order of decree shall not have been entered on or before January 1, 1941, requiring General Motors Corporation to divest itself of all ownership and control of General Motors Acceptance Corporation and all interest therein, nothing in the decree shall preclude Ford "from acquiring and retaining ownership of and/or control over or interest in any finance company", or from dealing with such finance company and with the dealers as elsewhere provided in the decree.

The Government did not obtain such a decree against General Motors Corporation by January 1, 1941, and it has not obtained one since. The Government has accordingly annually sought amendments of paragraph 12 of the decree to extend that date year by year. Ford granted those requests by stipulation until after the war period, but it denied consent to extension of the date beyond January 1, 1946. Thereupon the Government made a motion in the District Court for such an amendment, which Ford opposed and to which it interposed a cross motion to be relieved from the injunction against affiliation pursuant to the condition in paragraph 12 referred to above. The District Court granted the Government's motion and denied that of Ford. Ford appealed to this Court from that decision (No. 11).

The possible bearing of the *General Motors* case, above mentioned, appears from this Court's decision in *Chrysler Corporation v. United States*, 316 U.S. 556 (1942). That case involved an appeal from an order of the District Court extending the time limitation contained in paragraph 12 of a consent antitrust decree against Chrysler Corporation and others which was substantially identical with paragraph 12 of the decree against Ford. In that case this Court,

after tracing the background of the consent decrees against Chrysler and others, and Ford and the other appellants herein, said (316 U.S.; at page 563) that the basic purpose of the Chrysler decree was "that the ultimate rights of the parties thereunder should be determined by the Government's civil antitrust proceedings against General Motors Corporation and affiliated companies" and that "the time limitation was inserted to protect Chrysler from being placed at a competitive disadvantage in the event that the Government unduly delayed the initiation and prosecution of the General Motors injunctive proceedings."

The Government contends in substance that the *Chrysler* case is decisive of the affiliation question in No. 11. Ford contends, to the contrary, that the different facts appearing in the record in its case make the *Chrysler* case inapplicable, and that, if the *Chrysler* case be not deemed to be distinguishable, it should be re-examined.

One of the facts on which Ford relies in distinguishing this case from the *Chrysler* case is the lapse of over five years since this Court's decision in the latter case, during which time the *General Motors* case has not even been brought on for trial. The Government asserts various reasons for this delay in support of its contention that there has been no lack of due diligence on its part in prosecuting the case, which contention Ford contests. The Government has informed appellants that a concerted effort will be made to bring that case on for trial this fall. In that event, the trial should have been completed or at least be well along by next April. If such does not prove to be the case, appellants will wish to consider again the question of what they should do with respect to the instant appeals in the light of the situation as it shall then appear.

The second, "persuasion", question involves the interpretation of paragraph 12A of the consent decree herein involved. That paragraph provides the circumstances in which Ford and CIT will respectively be entitled to a suspension of paragraphs 6(i) and 7(d) of the consent decree, the former of which enjoined Ford from arranging or agreeing with CIT or any other finance company that agents of both shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer to patronize CIT or such other finance company, and the latter of which enjoins CIT correspondingly; and also will entitle Ford to a suspension of paragraph 6(k) of the decree enjoining it from recommending, endorsing, or advertising CIT or any other finance company to any dealer or to the public.

The corresponding paragraphs 6 and 12A in the consent decree against Chrysler and others are referred to in this Court's opinion in the *Chrysler* case, *supra*, and the Government cites the *Chrysler* case in its brief on its argument on the "persuasion" question as well as on the "affiliation" question. Appellants contend that the *Chrysler* case has no bearing whatever on the persuasion question, and see no present indication that that question will be affected by the decision in the pending *General Motors* case. However, as above stated, both the "affiliation" question and the "persuasion" question are to be presented to this Court on a single record and a single argument.

The Government has informed appellants that it is willing that hearing of oral argument in both cases be passed as herein requested.

WHEREFORE, appellants pray that hearing of oral argument in both of these cases be passed to a Session of this Court commencing in April of the present Term.

Respectfully submitted,

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October 16, 1947.